

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 670 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

DAHYABHAI K SOLANKI

Versus

M/S.TRILOK PAPERS PVT.LTD

Appearance:

MR HARESH J TRIVEDI for Petitioner

MR HM DHRUVA for Respondent No. 1

MR.K.C.SHAH,LD.PUBLIC PROSECUTOR for Respondent No. 7

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 19/04/96

ORAL JUDGEMENT

This is an Appeal against the orders of acquittal pronounced by learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur, in Criminal Case No. 2417 of 1990, dated November 10, 1993, under which the respondents came to be acquitted of the offences punishable under "The Water (Prevention And Control Of Pollution) Act,1974", and the Rules thereunder.

The case of the complainant Assistant Law Officer attached to the Board constituted under the Act is that, M/s. Trilok Papers Private Limited happened to be a paper mill situated at Barejadi and the accused persons no. 2 to 5 happened to be the directors. Accused no.6 is shown as incharge officer of the said paper mills. It is said that while manufacturing paper the process of pulping and washing is being undertaken and a quantity of about 2,25,000 liters of trade effluent is being discharged on the open land. The complainant has taken the sample of the trade effluent and the analysis report had shown that the accused persons were required to be prosecuted under the Act of 1974 and the Rules. The accused persons had pleaded not guilty to the charges levelled against them. Upon the appreciation of the evidence on record the accused persons have been acquitted by learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur, vide the orders dated November 10,1993. The present appeal has been directed against the above said orders of acquittal.

Learned Trial Magistrate was of the opinion that the sample was not maintained at the proper temperature level and that the sample was also not having any preservative. It appears that the above said view taken by learned Trial Magistrate could not be assailed. The entire procedure of taking sample was not shown in any document whatsoever. Moreover the sample was required to be maintained at the temperature of 4 degree centigrade. But the evidence show very clearly that this sample which was to be sent to Gandhinagar from Barejadi situated at a distance of 70 kilometers was not kept at the requisite temperature level. No evidence was forthcoming to show that after the collection of the sample it was put in ice box alongwith the requisite quantity of ice. Learned Trial Magistrate was therefore perfectly justified in coming to the conclusion that there was no evidence to warrant a conclusion that the sample was maintained at the temperature of 4 degree centigrade. Moreover witnesses had admitted very clearly that no preservatives were added.

Rule No. 27 of The Gujarat Water (Prevention & Control Of Pollution) Rules, 1976, prescribes the procedure for submitting samples to the State Water Laboratory. Rule 27(g) would go to show that the sample is required to be preserved as per the instructions given in IS-2488-1966 and 1968 (Part I, II and III) and IS-4733-1968.

It is thus clear that the said Rule was violated.
Not only this, the Rule-27(b) also appears to have been violated because the container was not of the requisite capacity.

It was sought to be urged on behalf of the appellant that the above said Rules are merely directory in nature and if there is no compliance thereof it would not prove fatal to the case of the prosecution. This contention cannot be accepted for the simple reason that the Rules have been framed under the Act to ensure the smooth working of the schemes of the Act. Rule 27 prescribes the procedure for submitting the samples to the State Water Laboratory. Care has been taken to see that the sample of the effluent collected reaches to the laboratory in a condition under which the exact result of analysis could be obtained. Even the capacity of the container is provided under the Rule 27 (b) of the Rules of 1976. This care taking procedure provided under Rule 27 of the Rules of 1976 cannot be said to be merely directory. If this procedure is not to be followed, it is clear that the sample would not give exact analysis. I am supported in this view by the decision of this Court in Criminal Appeal No. 626 of 1995, in which it has been laid down that Rule 27 of the Rules of 1976 is mandatory in character.

Thus, it appears that the learned Trial Magistrate was perfectly justified in his orders of acquittal. The Appeal therefore fails and the same is hereby accordingly rejected. The orders of acquittal pronounced by the Court below are hereby upheld and confirmed.
